

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 350

UNITED STATES, APPELLANT,

VS.

MANUFACTURERS NATIONAL BANK OF
DETROIT, ETC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

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Original Print

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Civ. No. 17137

MANUFACTURERS NATIONAL BANK OF DETROIT, a National
Banking Association, as Executor of the Last Will and
Testament of Clifford B. Longley, Deceased, *Plaintiff*,

v.

THE UNITED STATES OF AMERICA, *Defendant*.

Complaint—Filed September 20, 1957

Plaintiff, Manufacturers National Bank of Detroit, a National Banking Association, as Executor of the last will and testament of Clifford B. Longley, deceased, complains of defendant, The United States of America, and says:

1. This is an action against The United States of America to recover an internal revenue tax, to-wit an estate tax, erroneously and illegally assessed against and collected from the plaintiff as executor of the will of Clifford B. Longley, deceased. Jurisdiction of this action is vested in this Court by virtue of Title 28 United States Code, Section 1346. This plaintiff, Manufacturers National Bank of Detroit, is a National Banking Association having its principal office and place of business in the City of Detroit, Michigan, and is the duly qualified and acting executor of the last will and testament of Clifford B. Longley, deceased.

2. Clifford B. Longley died on July 15, 1954, a resident of the City of Detroit, County of Wayne and State of Michigan, leaving a last will and testament which was duly admitted to probate in the Probate Court for the County of Wayne and State of Michigan, that being the Court to which jurisdiction in that behalf belonged, on the 27th day of August 1954, and on the same date this plaintiff, being the executor named in said will and being appointed as executor, duly qualified as such executor and letters testamentary were issued to it. It is still acting as such executor.

3. On October 13, 1955, this plaintiff filed an Estate Tax Return on Treasury Form 806 in behalf of the estate of said decedent with the District Director of Internal Revenue at Detroit, Michigan, and on the same day paid to said District Director the tax disclosed as due by said return, namely, \$55,044.61.

4. Included in Schedule D (Insurance) of said return were the following policies of insurance on the life of said decedent, all were issued by the Mutual Benefit Life Insurance Company, a New Jersey Corporation of Newark, New Jersey:

Item Number	Policy Number	Value as Returned
5	1,093,763	\$ 25,120.83
6	1,302,517	25,171.00
7	1,302,518	25,548.38
8	1,552,548	50,353.00
	Total	\$126,193.21

5. On December 18, 1936, by an assignment bearing that date, decedent, Clifford B. Longley, had assigned to his wife, Harriet L. Longley, all of said policies of insurance. Such assignment was an absolute assignment and transferred all of the incidents and indicia of the ownership in said policies of insurance to said Harriet L. Longley, and she thereupon became the absolute owner thereof. A copy of said assignment is hereto attached and Marked Exhibit A.

6. Both before and after such assignment and up to the date of his death, decedent paid all premiums on said policies of insurance. Because of this payment of premiums by decedent, the total value of these policies was included, as above stated, as a portion of his taxable estate pursuant to Section 811(g)(2) of the Internal Revenue Code of 1939. But through error the premiums paid by decedent prior to January 10, 1941, were not excluded from the total amount of premiums so paid by him, as permitted by Section 404(c) of the Revenue Act of 1942 as amended by Section 503(a) of the Revenue Act of 1950. This error was discovered on audit of the return and the values of

such policies to be included in the taxable estate of decedent under Schedule D of the aforesaid return were reduced to the following amounts:

Item Number	Corrected Value
5	\$10,646.87
6	12,279.19
7	11,823.64
8	30,074.11
Total	\$64,823.84

7. This reduction in the amount includible in the taxable estate of said decedent on account of said policies of insurance, after making allowance for an increase in the value of another item included in said estate, resulted in a net reduction of \$56,388.82 in the value of the net taxable estate of said decedent. This in turn caused an overassessment and overpayment in the amount of \$7,781.65 in the estate tax as paid by this plaintiff on account of such estate. This overpayment has been duly refunded with interest to this plaintiff.

4 8. The inclusion of any portion of the value of said policies of insurance on the life of said Clifford B. Longley, deceased, in his taxable estate was erroneous because forbidden by Article I, Section 2, Clause (3) and Article I, Section 9 of the Constitution of the United States. The complete ownership of said policies had passed to said Harriet L. Longley, the wife of decedent, by virtue of said assignment of December 18, 1936. No interest whatsoever in said policies or the proceeds thereof passed to said Harriet L. Longley at the time of or because of the death of said decedent. No estate tax, inheritance tax, death duty or tax of any kind generated by the death of decedent could be either assessed or collected on account of such policies or the proceeds thereof. Said decedent had parted with all interest in such policies or the proceeds thereof when he assigned the same to his wife, Harriet L. Longley, on or about December 18, 1936. The tax so exacted from this plaintiff as executor of the will of said decedent on account of the proceeds of said policies was not an estate tax or any tax generated by death, but was a

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direct tax upon the proceeds of such policies. Such tax is unconstitutional, among other reasons, because not apportioned as required by Article I, Section 2, Clause (3) and Article I, Section 9 of the United States Constitution.

9. The inclusion in the taxable estate of said decedent of the portion of the proceeds of said policies, which was, as aforesaid, unconstitutionally held to be includible therein, resulted in an overassessment of estate tax on the estate of said decedent in the amount of \$8,945.70.

10. On November 20, 1956, this plaintiff filed with the District Director of Internal Revenue at Detroit, Michigan, a claim on Treasury Form 843 for the refund of such over-assessment. A copy of such claim for refund is hereto attached and marked Exhibit B. This plaintiff has
5 received no notice of the allowance or disallowance of said claim but more than six months has elapsed from the date of the filing of such claim.

WHEREFORE, the plaintiff demands judgment against the defendant, The United States of America, in the amount of \$8,945.70 with interest thereon as allowed by law.

HENRY I. ARMSTRONG, JR.
Henry I. Armstrong, Jr.
Bodman, Longley, Bogle,
Armstrong & Dahling
Attorneys for Plaintiff

Business and Post Office Address:
1400 Buhl Building
Detroit 26, Michigan

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Exhibit "A"—to Complaint

Detroit, Mich. 12/18/36

The Mutual Benefit Life Insurance Company is hereby requested to change the beneficiary under Policies Nos. 1,093,763, 1,302,517, 1,302,518 and 1,552,548, on my life, by making the policies payable to Harriet L. Longley, my Wife, her executors, administrators or assigns.

Make proceeds payable at maturity in one sum.

☛ hereby relinquish the right to exercise any rights or options heretofore retained.

I desire that Harriet L. Longley shall have the right, during her lifetime and prior to the maturity of the Policies, to exercise the following rights and options, without the consent of any other person. If (e), (f), (g) and (h) or any of them be so exercised, Harriet L. Longley is to receive all benefits arising therefrom.

- (a) Change of Beneficiary
- (b) Loans to pay premiums
- (c) Reinstatement
- (d) Settlement Options
- (e) Surrender Options
- (f) Cash Loans
- (g) Dividend Rights prior to Maturity of Policy
- (h) Receipt of proceeds as Endowment

I desire that Harriet L. Longley shall have the above right to change the beneficiary at any time and from time to time while these Policies or any extended insurance is in force and not assigned, upon return of the Policies to the Company at its Office in Newark, New Jersey, with her written request for the appropriate indorsement of the Policies by the Company.

(Signed) CLIFFORD B. LONGLEY
Clifford B. Longley—Sign

I accept the above and hereby reserve the rights and options as above provided.

(Signed) HARRIET L. LONGLEY
Harriet L. Longley—Sign

Witness

(Signed) ERNEST F. BERGER

(Signed) J. J. COBURN

Witness—Sign

* To be witnessed by someone who is known to the Company or Notary Public whose seal should be affixed.

6

7

Exhibit "B"—to Complaint

District Director's Stamp
(Date received)

U. S. Treasury Department—Internal Revenue Service

CLAIM

To be Filed With the District Director Where
Assessment Was Made or Tax Paid

The District Director will indicate in the block below the kind of claim filed, and fill in, where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Please Type or Print Plainly

Name of taxpayer or purchaser of stamps—The Manufacturers National Bank of Detroit, Executor of the Estate of Clifford B. Longley, Deceased.

Number and street—151 West Fort Street.

City, town, postal zone, State—Detroit 26, Michigan.

1. District in which return (if any) was filed—Detroit, Michigan.

2. Name and address shown on return, if different from above

3. Period—If for tax reported on annual basis, prepare separate form for each taxable year From , 19 To , 19 .

4. Kind of tax—Estate Tax.

5. Amount of assessment—\$47,202.96. Dates of payment—October 13, 1955.

6. Date stamps were purchased from the Government

7. Amount to be refunded—\$8,945.70 plus interest.

8. Amount to be abated (not applicable to income, estate, or gift taxes)

9. The claimant believes that this claim should be allowed for the following reasons:

SEE SCHEDULE ATTACHED

The return pursuant to which the tax in question was paid was filed by The Manufacturers National Bank of Detroit as Executor of the Estate of Clifford B. Longley, Deceased. The said The Manufacturers National Bank of Detroit is still acting as such Executor.

Use reverse if space is not sufficient.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed THE MANUFACTURERS NATIONAL
BANK OF DETROIT, Executor of
the Estate of Clifford B. Long-
ley, Deceased

By GEO. W. RUTZ
Trust Officer

Dated 11/15, 1956

INSTRUCTIONS

1. The claim must set forth in detail each ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. If a joint income tax return was filed for the year for which this claim is filed, both husband and wife must sign this claim even though only one had income.

3. Whenever it is necessary to have the claim executed by an agent on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent to sign the claim on behalf of the taxpayer shall accompany the claim.

4. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

8 ESTATE OF CLIFFORD B. LONGLEY, DECEASED CLAIM FOR REFUND OF ESTATE TAX

SCHEDULE

Decedent died on July 15, 1954. The Executor of his estate (this taxpayer) elected to have his gross estate valued as of July 15, 1955, as authorized by Section 811(j) of the Internal Revenue Code of 1939.

In Schedule D (Insurance) of the Federal Estate Tax return filed on account of his estate by said Executor, the following policies of insurance on the life of decedent were included, all issued by Mutual Benefit Life Insurance Company:

Item Number	Policy Number	Value as Returned
5	1,093,763	\$ 25,120.83
6	1,302,517	25,170.00
7	1,302,518	25,548.38
8	1,552,548	50,353.00
Total		\$126,193.21

By assignment, dated December 18, 1936, decedent had assigned all of these policies absolutely to his wife, Har-

riet L. Longley. He retained none of the incidents of ownership and she thereby became the absolute owner of such policies. The investigation of this Executor shows that at the same time decedent duly filed a gift tax return on account of this gift. Both before and after such assignment, decedent paid all premiums on them. Because of this payment of premiums by decedent, these policies were included as a portion of his taxable estate pursuant to Section 811(g)(2) of the Internal Revenue Code of 1939. But through error the premiums paid by decedent prior to January 10, 1941, were not excluded from the amount of premiums so paid by him as permitted by Section 404(c) of the Revenue Act of 1942 as amended by Section 503(a) of the Revenue Act of 1950. This error was discovered on audit of the return, and the values of such policies to be included in the taxable estate of decedent under Schedule D were reduced to the following amounts:

9 ESTATE OF CLIFFORD B. LONGLEY, DECEASED
CLAIM FOR REFUND OF ESTATE TAX

Item Number	Corrected Value
5	\$10,646.87
6	12,279.19
7	11,823.64
8	30,074.14
Total	\$64,823.84

This caused a reduction in the taxable estate of decedent in the amount of \$61,369.37. In the course of such audit the value of Item 1, of Schedule F (Miscellaneous Property) was increased from \$54,892.83 to \$59,873.38, thus making an increase of \$4,980.55 in the value of this item, so that a net deduction of \$56,388.82 was, pursuant to such audit, allowed in the taxable estate of decedent. This resulted in an overassessment of \$7,781.65 in the amount of the estate tax paid as aforesaid on October 13, 1955 on account of such estate. This overassessment has been duly refunded with interest to this Executor.

The inclusion of any portion of the value of said policies on the life of decedent in his taxable estate was erroneous

because unconstitutional. The complete ownership of said policies had passed to said Harriet L. Longley, the wife of decedent, by virtue of the aforesaid assignment of December 18, 1936. No interest whatsoever in said policies or the proceeds thereof passed to Harriet L. Longley at the time of, or because of the death of decedent. No estate tax, inheritance tax, death duty or tax of any nature upon transfers generated by the death of decedent could be either assessed or collected on account of such policies or the proceeds thereof because he had parted with all interest in such policies and their proceeds many years before his death. The tax so exacted from the Executor of decedent on account of the proceeds of such policies was not an estate tax but was a direct tax upon such proceeds and without apportionment as required by Article I, Section 2, Clause (3) and Article I, Section 9, of the Constitution of the United States and was therefore unconstitutional.

10 The inclusion in the taxable estate of said decedent of the portion of the proceeds of said policies which was unconstitutionally held to be includable therein by the Internal Revenue Service by virtue of the aforesaid audit, resulted in an overassessment of estate tax on the estate of said decedent in the amount of \$8,945.70. This claim is for the refund of that amount together with interest thereon.

The following is a summary of the calculation of such overassessment in general similar to Treasury Form 1272 "Line Adjustments—Estate Tax" and Treasury Form 1273 "Computation of Estate Tax."

11 ESTATE OF CLIFFORD B. LONGLEY, DECEASED CLAIM
FOR REFUND OF ESTATE TAX

SUMMARY OF GROSS ESTATE AND DEDUCTIONS
AS CORRECTED

	As per Audit	Deductions from Value of Estate	Corrected
A. Real Estate			
B. Stocks and Bonds	\$246,046.73		\$246,046.73
C. Mortgages, notes, and cash	87,764.68		87,764.68
D. Insurance	94,812.48	\$ 64,823.84	29,988.64
E. Jointly owned property	48,999.61		48,999.61
F. Other miscellaneous property	76,524.38		76,524.38
G. Transfers during decedent's life			
H. Powers of appointment			
I. Property previously taxed			
Total of Gross Estate	\$554,147.88	\$ 64,823.84	\$489,324.04
J-1. Funeral and Administration Expenses	\$ 5,553.42		\$ 5,553.42
K-2. Debts of Decedent	12,818.24		12,818.24
L-3. Mortgages and Liens	21,551.93		21,551.93
L-4. Support of Dependents			
L-5. Net losses during administration			
6. Allowable amount of above deductions	\$ 39,923.59		\$ 39,923.59
M-7. Bequest, etc. to surviving spouse	\$257,112.14		\$224,700.22
8. Adjusted gross estate	514,224.29		449,400.45
9. Net amount deductible for bequests to surviving spouse	\$257,112.14		\$224,700.22
N-10. Charitable, etc., bequests			
Total allowable deductions	\$297,035.73		\$264,623.81
FOR BASIC TAX			
Specific exemption	\$100,000.00		\$100,000.00
Deductions for property previously taxed			
Total Deductions	\$397,035.73		\$364,623.81
Net Estate	\$157,112.15		\$124,700.21
FOR ADDITIONAL TAX			
Specific exemption	\$ 60,000.00		\$ 60,000.00
Deduction for property previously taxed			
Total Deductions	\$357,035.73		\$324,623.81
Net Estate	\$197,112.15		\$144,700.23

**12 ESTATE OF CLIFFORD B. LONGLEY, DECEASED CLAIM
CLAIM FOR REFUND OF ESTATE TAX**

COMPUTATION OF ESTATE-TAX AS CORRECTED

	As per Audit	Corrected
Net estate (for basic tax)	\$197,112.15	\$164,700.23
Net estate (for additional tax)		
1. Gross basic tax	\$ 3,213.36	\$ 2,241.01
2. Credit for State inheritance taxes	\$ 3,213.36	\$ 2,241.01
3. Gross basic tax	\$ 2,570.69	\$ 1,792.81
4. Total gross taxes	49,833.65	40,110.07
5. Gross basic tax		
6. Gross additional tax		
7. Total gross taxes, less credit for State inheritance taxes	47,262.96	38,317.26
8. Credit for Federal gift taxes		
9. Credit for foreign death duties		
10. Total credit for Federal gift taxes and foreign death duties		
11. Net estate tax		\$ 38,317.26
Previously assessed		47,262.96
Overassessment		\$ 8,945.70

(File endorsement omitted)

**13 IN THE UNITED STATES DISTRICT COURT FOR THE EAST-
ERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

(Title omitted)

Answer Filed November 22, 1957

Comes now the defendant, the United States of America, by and through its attorney Frederick W. Kaess, United States Attorney for the Eastern District of Michigan, and for answer to the Complaint of the plaintiff admits, denies and alleges as follows:

1

Admits the allegations contained in paragraph 1 of the Complaint, except defendant denies that said estate tax

was erroneously and illegally assessed against and collected from the plaintiff and for lack of information and knowledge sufficient to form a belief defendant denies that plaintiff is the duly qualified and acting executor of the last will and testament of the decedent.

2

For lack of information and knowledge sufficient to form a belief defendant denies the allegations contained in paragraph 2 of the Complaint, except to admit that Clifford B. Longley died on July 15, 1954, a resident of the City of Detroit, County of Wayne and State of Michigan.

14

3

Denies the allegations contained in paragraph 3 of the Complaint, except to admit that on October 13, 1955, plaintiff filed an Estate Tax Return on Treasury Form 706 on behalf of the estate of the decedent with the District Director of Internal Revenue in Detroit, Michigan, and on November 14, 1955, paid to said District Director the tax disclosed as due by said return in the amount of \$55,044.61.

4

For lack of information and knowledge sufficient to form a belief defendant denies the allegations contained in paragraph 4 of the Complaint, except to admit that there was included in Schedule D of the estate tax return as policies of insurance on the life of said decedent:

Item Number	Mutual Benefit Life Insurance Co. Policy Number	Value as Returned
5	1,093,763	\$25,120.83
6	1,302,517	25,171.00
7	1,302,518	25,548.38
8	1,552,548	50,353.00

5

For lack of information and knowledge sufficient to form a belief defendant denies the allegations contained in paragraph 5 of the Complaint.

For lack of information and knowledge sufficient to form a belief defendant denies the allegations contained in paragraph 6 of the Complaint, except to admit that plaintiff included as a portion of decedent's taxable estate the aforementioned values referred to in paragraph 4 of defendant's answer. Further, defendant admits that upon audit of the return the values of such policies were reduced to the following amounts:

15

Item Number	Corrected Value
5	\$10,646.87
6	12,279.19
7	11,823.64
8	30,074.14

Denies the allegations contained in paragraph 7 of the Complaint, except defendant admits that as the result of an audit of the return an overassessment was determined in the amount of \$7,781.65 and that this amount plus interest was refunded to the plaintiff.

16

Denies the allegations contained in paragraph 8 of the Complaint.

Denies the allegations contained in paragraph 9 of the Complaint.

Denies the allegations contained in the first sentence of paragraph 10 of the Complaint, except defendant admits that on November 20, 1956, plaintiff filed with the District Director of Internal Revenue at Detroit, Michigan, a claim for refund on Treasury Form 843 in the amount of \$8,945.70, plus interest. Admits the allegations contained in the second sentence of paragraph 10 of the Complaint, except with reference to those allegations contained in the claim for refund, defendant denies any allegations contained therein which are not otherwise expressly ad-

mitted herein. For lack of information and knowledge sufficient to form a belief defendant denies the allegations contained in the third and last sentence of paragraph 10 of the Complaint, except to admit that more than six months has elapsed from the date of filing the claim for refund.

WHEREFORE, having fully answered, defendant prays that plaintiff's complaint and alleged cause of action be dismissed and that costs herein be assessed against plaintiff.

FRED W. KAESS

Fred W. Kaess

United States Attorney

Attorney for Defendant

By ELMER L. PFEIFLE, JR.

Elmer L. Pfeifle, Jr.

Asst. United States Attorney

Dated: November 22, 1957

(File endorsement omitted)

20 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

(Title omitted)

Stipulation of Facts Filed August 20, 1958

IT IS HEREBY STIPULATED AND DECREED by and between the parties hereto, through their respective counsel, that the following facts may be taken as true and may be included by the court in its findings of fact, subject to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated.

1. Clifford B. Longley died testate on July 15, 1954, a resident of the City of Detroit, County of Wayne and State of Michigan. His will was duly admitted to probate by the Probate Court for Wayne County, Michigan, on the 27th day of August, 1954, and on the same date Manufacturers National Bank of Detroit, a National Banking Association (the plaintiff in this cause) was appointed as executor of the estate of said Clifford B. Longley. It duly qualified and is still acting as such executor.

2. The plaintiff as such executor on October 13, 1955, filed an Estate Tax Return on Treasury Form 706 on account of the estate of said decedent with the District Director of Internal Revenue at Detroit, Michigan, and paid the tax shown as due by said return, namely, \$55,044.61.

3. The following policies of insurance on the life of said decedent, all issued by the Mutual Benefit Life Insurance Company of Newark, New Jersey, were included in a "Schedule D-Insurance" of said return at the following values:

Item Number	Policy Number	Value as Returned
5	1,093,763	\$ 25,120.83
6	1,302,517	25,171.00
7	1,302,518	25,548.38
8	1,552,548	20,353.00
	Total	\$126,193.21

Attached hereto and marked Exhibit A is a copy of said policy 1,093,763. Attached hereto and marked Exhibit B is a copy of said policy 1,302,517. Attached hereto and marked Exhibit C is a copy of said policy 1,302,518 and attached hereto and marked Exhibit D is a copy of said policy 1,552,548.

4. Under date of December 18, 1936, said decedent executed a document, a copy of which is hereto attached and marked Exhibit E. Said document was received on January 2, 1937, by Johnston & Clark, the general agents in Detroit, Michigan, of said Mutual Benefit Life Insurance Company at that time. On or about January 4, 1937, said document was received by the "Agreement Department" of the Mutual Benefit Life Insurance Company of Newark, New Jersey, and a copy of said document was endorsed on each of said policies.

5. Both before and after the execution of such document, and up to the date of his death, said decedent paid all premiums on said policies of insurance.

6. Under date of December 19, 1936, Harriet B. Longley, the wife of decedent mentioned in the said document of

which Exhibit E is a copy, executed and delivered to the Insurance Company an instrument, copy of which is attached hereto and marked Exhibit F. A copy of 22 said document was endorsed on each of said policies, and the proceeds of said policies are now held pursuant to the provisions of said document and of said policies.

7. On audit of said return by the Internal Revenue Service, it was discovered that in determining the proportion to total premiums, of premiums paid directly or indirectly by said decedent, Clifford B. Langley, plaintiff had not excluded the premiums paid by decedent before January 10, 1941. The resulting adjustment by the Internal Revenue Service reduced the value of such policies of insurance deemed includible in the gross estate for purposes of the estate tax to the following amounts:

Item Numbered	Policy Number	Corrected Value
5	1,093,763	\$10,646.87
6	1,302,517	12,279.19
7	1,302,518	11,823.64
8	1,552,548	30,074.14
Total		\$64,823.84

8. The adjustment referred to in paragraph 7, together with another adjustment, resulting in a net reduction of \$56,388.82 in the adjusted gross estate of said decedent. This reduction resulted in an overassessment of \$7,781.65 in the amount of the estate tax previously paid by plaintiff as executor on account of the estate of said decedent. Such overassessment, together with interest in the amount of \$37.10, or a total of \$7,818.75, was duly refunded plaintiff as such executor, on September 18, 1956.

9. On November 20, 1956, the plaintiff filed with the District Director of Internal Revenue at Detroit, Michigan, a claim for refund (Treasury Form 843) of estate taxes paid on behalf of the estate in the amount of \$8,945.70, plus interest. A copy of such claim is attached as Exhibit B to the Complaint filed in this case. The Commissioner of Internal Revenue has not issued a 23 statutory notice of disallowance of such claim for refund.

10. The amount of estate tax paid by plaintiff which is attributable to the inclusion in the gross estate of said decedent of the value of such policies of insurance as so reduced in paragraph 7 herein shall be determined by the joint mathematical computation of the parties immediately after the questions involved herein have been decided by this Court.

HENRY I. ARMSTRONG, JR.
 Henry I. Armstrong, Jr.
 BODMAN, LONGLEY, BOGLE,
 ARMSTRONG & DAHLING
Attorneys for Plaintiff

FRED W. KAESS
 Fred W. Kaess
*United States Attorney
 Attorneys for Defendant*

By ELMER L. PFEIFLE, JR.
 Elmer L. Pfeifle, Jr.
Asst. United States Attorney

Dated: August 20, 1958.

Detroit, Mich. 12 18 36

58

Exhibit "E" to Stipulation of Facts

The Mutual Benefit Life Insurance Company is heroby requested to change the beneficiary under Policies Nos. 1,093,763, 1,302,517, 1,302,518 and 1,552,548, on my life, by making the policies payable to Harriet L. Longley, my Wife, her executors, administrators or assigns.

Make proceeds payable at maturity in one sum.

I hereby relinquish the right to exercise any rights or options heretofore retained.

I desire that Harriet L. Longley shall have the right, during her lifetime and prior to the maturity of the Policies, to exercise the following rights and options, without the consent of any other person. If (e), (f), (g) and (h) or any of them be so exercised, Harriet L. Longley is to receive all benefits arising therefrom.

- | | |
|---|--------------------------------------|
| (a) Change of Beneficiary | (b) Loans to pay premiums |
| (c) Reinstatement | (d) Settlement Options |
| (e) Surrender Options | (f) Cash Loans |
| (g) Dividend Rights prior to Maturity of Policy | (h) Receipt of proceeds as Endowment |

I desire that Harriet L. Longley shall have the above right to change the beneficiary at any time and from time to time while these Policies or any extended insurance is in force and not assigned, upon return of the Policies to the Company at its Office in Newark, New Jersey, with her written request for the appropriate indorsement of the Policies by the Company.

CLIFFORD B. LONGLEY—sign
Clifford B. Longley—sign

I accept the above and hereby reserve the rights and options as above provided.

HARRIET L. LONGLEY—sign
Harriet L. Longley—sign

WITNESS • EMESH L. BUYER
J. J. COBURN
Witness—sign

- To be witnessed by some one who is known to the Company or Notary Public whose seal should be affixed.

DAVID P. PIERSON



Exhibit "F" to Stipulation of Facts

Date: Detroit, Michigan

12 19 36

The Mutual Benefit Life Insurance Company is hereby requested to incorporate in Policies Nos. 1,093,763, 1,302,517, 1,302,518 and 1,552,548, on the life of Clifford B. Longley, my Husband, and make a part thereof, the following change of beneficiary:—

If the Policies, or any of them, shall mature as death claims during my lifetime, the proceeds are to be retained by the Company and Monthly interest payments made thereon, as provided in Settlement Option A, as set forth on the other side hereof, to me, if living as the payments respectively fall due. Provided however, on each date when a Monthly payment of interest shall fall due, the Company is to pay to me such part of the amount retained as will, when added to the interest payment and dividend then due, make the total for each month \$415.00, if the interest payment and dividend then due shall be less than that amount, and upon the payment by the Company of such part of the amount retained the obligation of the Company as to the said amount thus paid is thereupon to cease and determine. It is to be understood and agreed, however, that at such time as the amount retained shall not be sufficient to make any of the above payments, the whole amount then retained, is to be payable to me, if living.

Immediately upon receipt at the Company's Office in Newark, New Jersey, of due proof of the death of the survivor of my said Husband and me, the proceeds of the Policies, or any amount still retained by the Company, as the case may be, shall be payable subject to the following provisions, in equal shares to such Children born of the marriage of my Husband with me, as shall be then living and to the then living issue, per stirpes, of any who shall be deceased; or, if there be no such Beneficiaries thus living, to the executors, administrators or assigns of the survivor of my Husband and me.

The share apportioned in accordance with the provisions of the preceding paragraph to any Child mentioned

above who shall be living at the death of the survivor of my Husband and me is to be held as provided in Settlement Option A and Monthly interest payments thereon made to said Child, if living as the payments respectively fall due. Any Child mentioned above is to have the right at any time after attaining age Fifty to require that the amount upon which he or she may be entitled to receive interest payments be paid to him or her in Monthly Instalments for Ten years certain and during his or her after lifetime as provided in Settlement Option C, as set forth on the other side hereof. Immediately upon receipt as above of due proof of the death of any Child while entitled to receive interest payments in accordance with the provisions of this paragraph, or to receive Instalments certainly payable under his or her share any amount still retained by the Company for the benefit of such Child or the commuted value of any Instalments certainly payable remaining unpaid under his or her share is to be payable to such issue of said Child, per stirpes, as shall be then living, or, if none be thus living, to such of the other Children mentioned above, share and share alike, as shall be thus living and to the then living issue, per stirpes, of any who shall be deceased; or if there be no such Beneficiaries thus living, to the executors, administrators or assigns of the last survivor of the aforesaid Children.

The right of withdrawal and the right of commutation are to be withheld from the aforesaid Children and the right of withdrawal is also to be withheld from me.

Signed: HARRIET L. LONGLEY

(File endorsement omitted)

61 IN THE UNITED STATES DISTRICT COURT FOR THE EAST-
ERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Order Amending Complaint—August 20, 1958

(Title omitted)

PRESENT: HONORABLE THOMAS P. THORNTON, District Judge.

On reading and filing the stipulation of the parties hereto by their respective attorneys consenting to the amendment of a complaint of the plaintiff herein,

IT IS ORDERED that said complaint be and it hereby is amended by adding the following clause at the end of paragraph 8 thereof, viz:

"Such tax is unconstitutional also because it is retroactive and discriminatory in its operation for the reason that said policies of insurance were as aforesaid assigned by said decedent on December 18, 1936 and were thereby removed from his estate for all purposes, and to reinclude them in his estate for purposes of the Federal Estate Tax thereon as defendant claims is done by the Internal Revenue Code of 1939 as amended would constitute a violation of due process forbidden by the Fifth Amendment of the Constitution of the United States."

THOMAS P. THORNTON
District Judge

(Title omitted)

62 Stipulation for Amendment of Complaint—August 20, 1958

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled cause by their respective attorneys that the Plaintiff may amend its complaint herein by adding the following clause at the end of paragraph 8 of said complaint, viz:

"Such tax is unconstitutional also because it is retroactive and discriminatory in its operation for the reason that said policies of insurance were as aforesaid assigned by said decedent on December 18, 1936 and were thereby removed from his estate for all purposes, and to include them in his estate for purposes of the Federal Estate Tax thereon as defendant

claims is done by the Internal Revenue Code of 1939 as amended would constitute a violation of due process forbidden by the Fifth Amendment of the Constitution of the United States."

DATED: August 20, 1958.

HENRY I. ARMSTRONG, JR.
Henry I. Armstrong, Jr.
BODMAN, LONGLEY, BOGLE,
ARMSTRONG & DAHLING
Attorneys for Plaintiff

FRED W. KAESS
Fred W. Kaess
*United States Attorney,
Attorney for Defendant*

By ELMER L. PFEIFLE, JR.
Elmer L. Pfeifle, Jr.
Asst. United States Attorney

(File endorsement omitted)

63 IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION

(Title omitted)

**Answer of the United States of America to the Complaint as
Amended—Filed August 21, 1958**

Now COMES the United States of America, defendant herein, by its attorneys Fred W. Kaess, United States Attorney for the Eastern District of Michigan, and Elmer L. Pfeifle, Jr., Assistant United States Attorney for said District, and for answer to Paragraph 8 of the plaintiff's complaint, as amended by order dated August 20, 1958, denies the allegations contained in Paragraph 8 of the complaint as amended.

FRED W. KAESS
United States Attorney

By ELMER L. PFEIFLE, JR.
Elmer L. Pfeifle, Jr.
Asst. United States Attorney

Dated: August 21, 1958

(File endorsement omitted)

64 IN UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Civil Action No. 17137

MANUFACTURERS NATIONAL BANK OF DETROIT, a National
Banking Association, as Executor of the Last Will and
Testament of Clifford B. Longley, Deceased,

Plaintiff,

THE UNITED STATES OF AMERICA,

*Defendant.***Opinion—June 1, 1959**

Plaintiff brings this suit to recover estate taxes paid by it as executor for the estate of Clifford B. Longley, who died July 15, 1954. The issue here is simply whether a section of the Internal Revenue Code of 1939, as amended, is unconstitutional as applied in this case. The identical question has been decided by several courts prior to this time, but there is a conflict in their decisions. It appears to us that there is no reconciliation possible and that we must reach a yes or no result. We shall proceed, therefore, to set forth the considerations which have led us to adopt as our own, the views set forth in the particular decision with which we concur.

At the outset, let us state that this case has been submitted to the Court for decision upon a stipulation of facts¹ and upon the briefs of the respective parties. The Court has had the benefit of thorough and well prepared briefs.

65 At the time of the death of the decedent herein, July 15, 1954, there was still in effect the 1939 Internal Revenue Code. Approximately a month later the 1954 Code went into effect, and the provision of the 1939 Code here under consideration was eliminated. Were the 1954 Code operative in the instant case, there would be no question but that the insurance proceeds here in dispute would not be subject to the estate tax.

¹ Attached as appendix hereto.

The beneficiary of the insurance policies here was the owner thereof, by virtue of assignment dated December 18, 1936. The decedent retained no incident of ownership from that date on. He had paid all premiums prior to the assignment and continued to pay all subsequent thereto. The assignment instrument provides that the beneficiary (wife) had the right to change beneficiary, reinstatement, surrender options, dividend rights prior to maturity of policy, loans to pay premiums, settlement option, cash loans and receipt of proceeds as endowment. The situation of the decedent here with respect to his rights in the policy is the same as that of the decedent in these recent cases, namely,

Kohl v. U. S., 226 F. (2d) 381, (7 Cir., 1955),

Loeb's Estate v. Commissioner, 261 F. (2d) 232, (2 Cir., 1958);²

Schwarz v. U. S., 170 F. Supp. 2 (E. D. La., 1959).

The language of the Internal Revenue Code of 1939, as amended, which is the focal point of the cases cited above and of this case, is set forth here:

“ § 10. Rate of Tax

66 A tax * * * shall be imposed upon the transfer
of the net estate of every decedent * * *.”

“ § 11. Gross estate

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—
* * * * *

“ (g) Proceeds of life insurance * * *

(1) *Receivable by the executor.*—To the extent of the amount receivable by the executor as insurance under policies upon the life of the decedent.

(2) *Receivable by other beneficiaries.* To the extent of the amount receivable by all other beneficiaries as insurance under policies upon the life of the decedent (A) purchased with premiums, or other con-

² Affirming Estate of Clarence H. Loeb, 29 T. C. 22.

sideration, paid directly or indirectly by the decedent, in proportion that the amount so paid by the decedent bears to the total premiums paid for the insurance,

In reaching our determination of this case we have considered the cases cited by counsel for the respective parties. We have also endeavored to seek guidance from opinions of the Supreme Court and of the Court of Appeals for the Sixth Circuit. We have been impelled toward resolving this case in favor of the plaintiff, on the basis of the reasoning found in *United States v. Bess*, 357 U. S. 51 (1958); *Tyson v. Commissioner*, 212 F. (2d) 16 (6 Cir., 1954); and *Stern v. Commissioner*, 242 F. (2d) 322 (6 Cir., 1957).³ We are well aware that § 311(a)(1),(f) of the Internal Revenue Code of 1939 involved in these 3 cases is different from § 811 and that a different concept may be involved—there the question of unpaid income taxes of a decedent is treated. However, the term *transfer* there has been considered as of paramount importance. In the instant case it is of paramount importance that insurance proceeds be deemed to constitute a *transfer* if the tax is to be upheld. Despite all the arguments that may be advanced against using a § 311 case as authority for a § 811 case, this Court takes the view that logic as such does not vary from statute to statute or case to case. If 2 plus 2 equals 4 for one purpose, it equals it for all, absent a different semantic hypothesis. It is the logic found within the confines of the 3 opinions just cited—*Bess*, *Tyson*, *Stern*—that has brought us to the conclusion that no transfer of the property herein sought to be included in the estate of this decedent occurred at the time of his death. Therefore, to the extent that § 811(g)(2) is sought to be applied to the insurance proceeds herein, it is unconstitutional. We think that this conclusion is implicit in the holdings in the *Bess*, *Tyson* and *Stern* cases, *supra*, which cases we have used by way of analogy. We therefore adopt the reasoning in the *Kohl* case, *supra*, as our own.

³ Affirmed 1958, 367 U. S. 80.

A judgment may be presented accordingly.

Dated at Detroit, Michigan, this 1st day of June A. D. 1959.

THOMAS P. THORNTON
United States District Judge

(Clerk's Certificate to foregoing paper omitted in printing.)

68 Stipulation of Facts (omitted here)
printed on page ~~24~~¹⁵ supra

• • • • •
(File endorsement omitted)

72 IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION

Civil No. 17137

MANUFACTURERS NATIONAL BANK OF DETROIT, a National
Banking Association, as Executor of the Last Will
and Testament of Clifford B. Longley, Deceased,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

Judgment—June 26, 1959

• • • • •
PRESENT: HONORABLE THOMAS P. THORNTON, United
States District Judge.

The Court having considered the evidence and the arguments of counsel, and having entered its findings of fact and conclusions of law herein, it is in conformity therewith:

ORDERED, that plaintiff have judgment against defendant for the principal amount of \$8,945.70, with interest thereon at six percent according to law from October 15, 1955.

THOMAS P. THORNTON
District Judge

Approved as to form:

FRED W. KAESS

United States Attorney

By **ELMER L. PFEIFLE, JR.**
Elmer L. Pfeifle, Jr.
Assistant United States Attorney

(Clerk's Certificate to foregoing paper omitted in printing.)

(File endorsement omitted)

73 IN THE UNITED STATES DISTRICT COURT FOR THE EAST-
 ERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Civil No. 17137

**MANUFACTURERS NATIONAL BANK OF DETROIT, a National
 Banking Association, as Executor of the Last Will
 and Testament of Clifford B. Longley, Deceased,**
Plaintiff,

v.

THE UNITED STATES OF AMERICA,
Defendant.

**Notice of Appeal to the Supreme Court of the United States—
 Filed June 30, 1959**

I. Notice is hereby given that the United States of America, defendant in the above action, hereby appeals to the Supreme Court of the United States from the final judgment in favor of the plaintiff entered in this action on June 26, 1959.

This appeal is taken pursuant to Title 28, United States Code, Sections 1252 and 2101(a).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint and Exhibits A and B thereto, filed September 20, 1957.
2. Answer of the defendant United States of America, filed November 22, 1957.
3. Stipulation for Amendment of Complaint, filed August 20, 1958.

4. Order Amending Complaint, filed August 20, 1958.

74 5. Stipulation of Facts and Exhibits A through F thereto, filed August 20, 1958.

6. Answer of the defendant United States of America to Complaint as amended, filed August 21, 1958.

7. Opinion (Thornton, J.) and Appendix thereto dated and filed June 1, 1959.

8. Judgment entered June 26, 1959.

9. This Notice of Appeal.

III. The following question is presented by this appeal:

Whether Section 811(g) of the Internal Revenue Code of 1939, as amended by Section 404 of the Revenue Act of 1942, relating to the federal estate tax, is unconstitutional in its application to this case as imposing a direct tax without apportionment in violation of Article I, Sections 2 and 9, of the Constitution and as resulting in a deprivation of property without due process of law in violation of the Fifth Amendment of the Constitution.

FREDERICK W. KAESS,
Frederick W. Kaess,
United States Attorney.

By ELMER L. PFEIFLE, JR.,
Elmer L. Pfeifle, Jr.,
*Assistant United States Attorney,
Attorneys for Defendant*

Dated: June 30, 1959

75 Proof of Service (omitted in printing).

30

76

(Clerk's Certificate to foregoing transcript
omitted in printing.)

78

SUPREME COURT OF THE UNITED STATES

No. 350, October Term, 1959

UNITED STATES

Appellant,

vs.

MANUFACTURERS NATIONAL BANK OF
DETROIT, ETC.

APPEAL from the United States District Court for the
Eastern District of Michigan.

Order Noting Probable Jurisdiction—November 9, 1959

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted